

several to ten or more nm in the vicinity of its leading end or a diameter of about 10 nm to 30 nm in the vicinity of its leading end, and an aspect ratio of about 10 or more.” However, there is no evidence of record to show that the claimed process could be used as the Office has alleged. If, in fact, the claimed process can be used to make the alleged product, the Office has failed to show that this product is materially different from the claimed product. Accordingly, Applicants respectfully submit that the Restriction Requirement is unsustainable, and it should therefore be withdrawn.

Applicants traverse the Restriction Requirement on the additional grounds that the Office has not shown that a burden exists in searching all the claims of the present application.

Moreover, MPEP §803 states as follows:

If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on its merits, even though it includes claims to distinct or independent inventions.

Applicants submit that a search of all claims would not constitute a serious burden on the Office.

For the reasons set forth above, Applicants contend that the Restriction Requirement is improper and should be withdrawn.

Finally, MPEP §821.04 states:

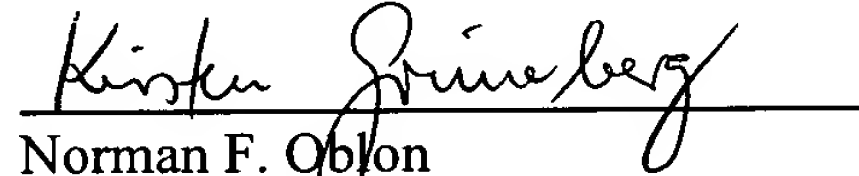
...if applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims which depend from or otherwise include all the limitations of the allowable product claim will be rejoined.

Applicants respectfully submit that should the elected group be found allowable, non-elected Claims 1-9, 30, and 31 (Group I) should be rejoined.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice of such action is earnestly solicited.

Respectfully submitted,

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